

**Marcy Setter**

**Subject:** Response to Inquiry on Denver's Pit Bull Ordinance



# CITY AND COUNTY OF DENVER

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## Pit Bull Ordinance

On behalf of Mayor John Hickenlooper, I have been asked to respond to your recent letter inquiring about Denver's pit bull ordinance. While a much more detailed explanation of the full history and judicial review of Denver's pit bull ban ordinance is now available online on the official website of the City & County of Denver at [www.denvergov.org/City\\_Attorney](http://www.denvergov.org/City_Attorney) -under the section entitled "Pit Bull Ordinance Information" as well as a number of relevant documents, the following information may answer your questions:

The history behind Denver's pit bull ordinance goes back further than the mere date of its passage on July 31, 1989. Between 1984 and May of 1989, pit bulls attacked and seriously injured more than 20 people in Colorado, including three-year old Fernando Salazar, who was fatally mauled by a pit bull in southwest Denver in October of 1986. On May 8, 1989, 58 year-old Reverend Wilber Billingsley was attacked and bitten by a pit bull in the alley behind his home at 1075 Emerson Street, Denver. The pit bull's attack was sustained over a long period of time, and a neighbor, Mr. Norman Cable, attempted to stop the attack by hitting the pit bull with a 2" x 4" piece of wood lumber, which had no effect. Mr. Cable eventually was able to stop the attack only by shooting the pit bull with a shotgun. The victim suffered serious injuries over 70 bites, with both of his legs being broken. As a result of these attacks, the opinion of the local community, as evidenced by editorials by the two leading newspapers, was in support of increased regulation over pit bulls, including a complete ban:

*Let's outlaw killer dogs*, editorial, Denver Post, June 12, 1998; and *Tougher rules and stronger enforcement on pit bulls*, editorial, Rocky Mountain News, May 12, 1989. The most recent fatal dog mauling in Colorado involved three pit bulls viciously mauling Jennifer Brooke, which occurred in November of 2003 in Elbert County.

The nation's leading expert in the field of ethology (the study of animal behavior) and pit bulls, Dr. Peter Borchelt, Ph.D., a certified applied animal behaviorist, testified before the Denver District Court that this breed of dog was artificially selected by humans for breeding in order to enhance their behavioral traits most beneficial in fighting other animals, and resulted in a breed of dogs having an aggressive behavior frequency distribution pattern that is permanently shifted higher than other breeds of dogs. Such behavioral traits as higher levels of strength, tenacity, tolerance to pain, combined with their "bite, hold and shake" attack behavior that results in the ripping and tearing of flesh and muscle, presents a logical explanation for this ban. While the individual tendencies of any individual pit bull may vary, as a clearly defined phenotype, the breed has been determined to have higher levels of such dangerous tendencies as a group, justifying this action.

This ordinance has been heavily litigated, and has been upheld by the judiciary repeatedly, as the best available evidence indicates that there is a logical reason to differentiate the treatment of pit bulls from other dogs, not because they are more likely to attack humans or other domesticated pets, but should they attack, they are more likely to impose serious injuries upon their victims, and more likely to cause fatalities. This determination was upheld by the Colorado Supreme Court in 1991, in the matter of *Colorado Dog Fanciers, Inc., v. Denver*, 820 P.2d 644 and most recently by the Denver District Court on April 7, 2005.

Upon Governor Owens signing HB04-1279 into law on April 21, 2004, Nancy Severson, the Manager of the Denver Department of Environmental Health, the administrative agency over the Division of Animal Control, announced the voluntary suspension of enforcement actions of the ordinance, but advised that the enforcement could resume upon the conclusion of any legal litigation. Subsequently, the Division of Animal Control consistently advised everyone that their possession of a pit bull in Denver would be done at their own peril, as enforcement of the ordinance could resume at any time. The extensive local media's coverage of the pit bull litigation also provided notice, specifically after the City's victory in December 2004 in its litigation with the State over the issue of constitutional home rule authority. The City & County of Denver shall resume enforcement of its ordinance on Monday, May 9<sup>th</sup>, in order to exercise its lawful home rule authority pursuant to Article XX of the Colorado state constitution in pursuit of its duty to protect the health, safety and welfare of its citizens. Despite no legal requirement to grant any delay in the resumption of enforcement, the 30-day period is more than reasonable to allow the removal of these pit bulls.

Finally, as the executive branch of Denver's municipal government is tasked with the enforcement of laws passed by the legislative branch, any changes to the ordinance would be the decision of the Denver City Council.

Thank you again for you inquiry.

Respectfully,

A handwritten signature in black ink, appearing to read "Kory Nelson". The signature is written in a cursive, flowing style with a large initial "K" and a long, sweeping tail.

Kory A. Nelson, Esq.

Assistant City Attorney-Senior